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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.J., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Appellant,

v.

P.G.,

Defendant and Respondent.

D070100

(Super. Ct. No. EJ3602C)

APPEAL from an order of the Superior Court of San Diego County, Gary M.
Bubis, Judge. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and
Respondent.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Lisa Maldonado, Deputy County Counsel, for Plaintiff and Appellant.

Dependency Legal Group of San Diego, Carolyn Levenberg, Stacey Otzmann and
Caitlin Zaback for Minor.

P.G. (Mother) appeals an order granting a Welfare and Institutions Code section 366.26¹ petition filed by the San Diego County Health and Human Services Agency (Agency) to terminate her parental rights to her daughter, L.J., and finding a permanent plan of adoption is appropriate for L.J. On appeal, Mother contends there is insufficient evidence to support the juvenile court's findings that: (1) L.J. is adoptable; and (2) the beneficial parent-child relationship exception (§ 366.26, subd. (c)(1)(B)(i)) did not apply to preclude a permanent plan of adoption for L.J. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

A. 2012 petition and detention hearing

Mother is the mother of L.J., born in 2006. In 2012, Agency filed a section 300, subdivision (a), dependency petition on behalf of L.J. alleging that she suffered, or was at substantial risk of suffering, serious physical harm inflicted nonaccidentally by Mother. The petition specifically alleged Mother used excessive discipline by hitting L.J. with a belt whenever she got in trouble and, on September 21, 2012, hit L.J. with a belt causing a visible linear line on her neck. In Agency's detention report, it reported that Mother had called police and admitted she struck five-year-old L.J. and her seven-year-old brother, J.G., with a belt and her hands. Mother stated that L.J.'s biological father was "Nathan," but she did not know his last name or his whereabouts. At the detention hearing, the juvenile court ordered L.J. detained at Polinsky Children's Center (PCC) and granted Mother supervised visitation with her.

¹ All statutory references are to the Welfare and Institutions Code.

B. Jurisdiction and disposition report and hearing

In Agency's jurisdiction and disposition report, it recommended that L.J. remain in an out-of-home placement and that Mother be offered reunification services. At the jurisdiction and disposition hearing, the court sustained the petition, declared L.J. a dependent of the court, ordered that she be placed in PCC or an approved foster home, ordered reunification services for Mother, and set six-month and 12-month review hearings.

C. Six-month review report and court orders

In its status review report for the six-month review hearing, Agency recommended that L.J. remain in her foster care placement.² L.J. had behavioral problems at school. Mother had completed her parenting classes and begun individual therapy.

At a pretrial status conference, the court found the return of L.J. to Mother would create a substantial risk of detriment to L.J.'s physical and emotional well-being. The court ordered that L.J. be placed in the approved home of a relative, that reunification services for Mother be continued, and that Mother have unsupervised visits, including overnight visits at Agency's discretion.

D. Twelve-month review report and hearing

In its status review report for the 12-month-review hearing, Agency recommended that L.J. remain a dependent of the court, but that she be returned to Mother's care and that Mother be offered six months of family maintenance services for L.J. Although L.J.

² Agency also recommended that J.G. be placed with his father, D.F.

had behavioral problems at school, her behavior improved when the new school year began in September 2013.³ Mother had engaged in individual therapy. Her visits with L.J. had gone well, including overnight visitation in July.

In October 2013, the court set a contested 12-month-review hearing and ordered that L.J. immediately begin a 60-day trial visit with Mother. At the contested 12-month review hearing, the court continued its jurisdiction over L.J., ordered that she be placed with Mother, and ordered that services be continued to be provided to Mother.

E. Mother's section 388 petition and Agency's review report

In March 2014, Mother filed a section 388 petition that requested an order terminating the court's jurisdiction over L.J. so Mother could move out of state with her. Mother told an Agency social worker that she planned to move in with her sister in Minnesota and begin working at a friend's restaurant. In a status review report, Agency recommended that L.J. remain a dependent of the court. L.J. had continued to reside with Mother since November 2013. They initially resided in Mother's home, but they were evicted in January 2014 and thereafter stayed with L.J.'s maternal grandmother on weekends and with her cousin during the week. In March, Mother refused to provide Agency with her current address.

At the March review hearing, Mother withdrew her section 388 petition and instead sought a contested family maintenance review hearing seeking termination of the

³ Agency also reported that J.G. had been removed from his father's custody and placed in a group home because J.G. had set fire to the family home, causing \$500,000 in damage, and his father was no longer willing to care for him.

court's jurisdiction over L.J. In an addendum report, Agency reported L.J. had not attended school for over a month and had attended three different schools since being placed with Mother. Mother was homeless, was uncooperative with Agency, and had refused to give Agency her current address.

F. Agency's November and December 2014 review reports

In a November status review report, Agency recommended that L.J. remain in Mother's care. Mother was currently homeless and she and L.J. were staying at a motel with a friend. For several months, Mother had used friends and family for temporary housing, but was unable to stay with them long-term. L.J. was having difficulty in school and engaged in tantrums, defiance, and disruption.

Agency received a referral that L.J. had taken the trolley downtown by herself after school and was found by MTS security officers. L.J. explained to the officers that she had been waiting for her mother at school and did not want to wait any longer, so she took the trolley alone to her mother's school downtown (i.e., San Diego City College). Mother begrudgingly agreed to Agency's recommendation of wraparound services for L.J., but was subsequently uncooperative and refused wraparound services.

In a December addendum report, Agency reported it had received a referral that Mother had scratched L.J.'s neck when she grabbed L.J. by the shirt as she (L.J.) was flushing a piece of pizza down the toilet. When Agency investigated, it learned the address that Mother had given it was no longer current. Mother had also moved L.J. to another school. Mother stated she lived with a maternal uncle, but refused to disclose his address because of fear he would kick her out.

G. Agency's second supplemental section 387 petition, reports, and hearing

In January 2015, Agency filed a supplemental section 387 petition alleging that L.J.'s placement with Mother since November 8, 2013, was now inappropriate because Mother was unable to provide adequate care and supervision for L.J. and had refused to disclose where she and L.J. were residing. It alleged there had been two separate referrals regarding L.J.'s safety and recommended that the court modify her placement to the home of a foster caretaker. At the detention hearing, the court found a prima facie case had been made by Agency, ordered L.J. detained at PCC or an approved foster home, and ordered Mother to have liberal supervised visits and unsupervised visits in Agency's discretion.

In a February addendum report, Agency reported it had received a referral alleging Mother had pushed a person and threatened that person's son, and that a restraining order had been issued against Mother as a result. Mother did not have stable housing. Agency believed it was not in L.J.'s best interests that it continue to provide services to Mother because she had not worked consistently with it to ensure L.J.'s safety, and L.J. needed stability that Mother had been unable to provide. Agency recommended that the court continue L.J.'s foster home placement, terminate Mother's reunification services, and schedule a section 366.26 hearing.

In a March addendum report, Agency reported that L.J. was doing well both in her foster home placement and at school. L.J. settled into the structured environment of her foster home. Her teacher reported she had seen a complete change in L.J. She had less frequent outbursts and soothed herself much faster after becoming upset. Although

Mother continued her efforts to find stable housing, in the meantime she was staying in motels, with friends, and at shelters. Agency was concerned that Mother was not able to provide the stability and consistency that L.J. needed.

At the March 17 contested adjudication and disposition hearing on Agency's section 387 petition, the court found that Agency had provided reasonable services to Mother and that she had made some progress with the provisions of her case plan. Nevertheless, the court terminated Mother's services, removed L.J. from her custody, and scheduled a section 366.26 hearing to select and implement a permanent plan for L.J.

H. Agency's July and October 2015 addendum reports

In a July addendum report, Agency social worker Kathleen Forbes described L.J. as a fun and delightful eight-year-old girl who liked to play games, swim, and play at the park, and loved art. While L.J. continued to suffer from enuresis, encopresis was a newly reported concern. Since being removed from Mother's care, L.J.'s behavior at school and at home had significantly improved. Her overall demeanor had noticeably changed. L.J. was no longer fearful of what to say, was engaging and confident, made eye contact, smiled, and was happy.

Forbes reported that, as of June 2015, there were 11 possible families with approved adoptive home studies who would be interested in adopting a child with L.J.'s and her family's characteristics. Agency had undertaken recruitment efforts for both L.J. and J.G., including featuring them on an Adopt 8 television segment and in a future Chargers calendar and taking professional photographs of them.

In an October addendum report, Forbes recommended that the court continue the section 366.26 hearing to allow Agency to further assess L.J.'s case and seek a possible permanent placement for her. L.J. continued to reside with her foster parents, who enjoyed having her as part of their household. Her enuresis had ceased since Forbes's last report. Mother continued to visit L.J. weekly at the Family Visitation Center (FVC).

Forbes stated her opinion that L.J. is adoptable because she is very fun, sweet, cute, healthy, and smart. Although there currently was not a potential adoptive home for L.J., Forbes believed a permanent home for her could be found. However, Forbes wanted to first exhaust efforts to find a placement for both L.J. and J.G., who currently was in a group home. Forbes had received four home studies from families who had expressed interest in the sibling set. Also, as of September 2015, there were six families in San Diego County with approved adoptive home studies who would be interested in adopting a child with L.J.'s characteristics.

I. Mother's second section 388 petition

In December, Mother filed a section 388 petition seeking to modify the court's order terminating her reunification services and scheduling the section 366.26 hearing. Alternatively, she sought an order returning L.J. to her care and reinstating reunification services for her. She asserted her circumstances had changed because she obtained stable housing at St. Vincent de Paul, had completed her program requirements, met weekly with her chaplain, graduated from cosmetology school, and was seeking employment.

J. Agency's December 2015 and January 2016 addendum reports

In a December addendum report, Forbes reported that Agency had located a family interested in adopting L.J. while maintaining a close connection with J.G. or eventually being a permanent placement for both L.J. and J.G. Also, there were several specific families who had expressed interest in adopting L.J. Mother continued to have weekly supervised visits with L.J. and J.G. at FVC, although it could cancel her visitation services because her multiple instances of tardiness had been classified as "no shows." L.J. liked seeing Mother and J.G. During visits, Mother asked L.J. and J.G. how they were doing, spoke with them about school, and chose snacks and activities for them at FVC.

Forbes stated her opinion that L.J. had a relationship with Mother, having lived with her for about seven years. However, during that time, there had been many child abuse referrals and L.J. had been removed twice from Mother's care. Although L.J. felt positively toward Mother, Mother had not demonstrated positive parenting and had not acted in a parental role despite many opportunities to do so. Forbes stated her opinion that the benefits of adoption outweighed any detriment L.J. would suffer from the termination of parental rights. L.J. was nine years old, had been part of the foster care system since she was five years old, and had not experienced a sustained period of safety and stability. Since placement with her current caregivers, L.J. had demonstrated physical and emotional benefits from a consistent home. Therefore, Forbes recommended that the court terminate Mother's parental rights and order adoption as L.J.'s permanent plan.

In a January 2016 addendum report, Forbes reported that a potential adoptive home for L.J. had been identified. L.J. had been given a book of pictures made by that family and she stated she wanted to meet them. She watched the movie, "The Good Dinosaur," which is about adoption, and felt positively about being with a different family. L.J.'s meeting with the potential adoptive family went well and L.J. stated the family seemed nice. L.J.'s teacher reported that L.J. seemed very excited that a family was interested in adopting her and showed her teacher the book the family had made.

K. Contested section 388 and section 366.26 hearings

On April 1, 2016, the court held a contested section 388 modification hearing, which was followed by a contested section 366.26 hearing to select and implement a permanent plan for L.J. At the first hearing, Mother offered, and the court received in evidence, a bonding study performed by Yanon Volcani, a clinical psychologist, dated January 12, 2016, and FVC's notes from Mother's visits from January 20 through March 20. Agency offered, and the court received in evidence, all Agency's status review and addendum reports from November 2014 through January 2016, its January 2015 detention report, and its July 2015 section 366.26 assessment report. The court also received reports by the court-appointed special advocate (CASA) dated July 8, 2015, and December 16, 2015.

L.J.'s CASA report dated December 16, 2015, stated that L.J. was a fun, sweet, cute, healthy, and smart nine-year-old girl. Although L.J.'s poor behavior at school had escalated, her teacher told the CASA that L.J.'s behavior had recently improved and that L.J. was "really trying" to control her behavior. The CASA stated that L.J. was thriving

with the structure and discipline that her current caregivers and teacher had provided her. She stated her opinion that L.J. deserved permanency and that Mother had not shown the ability to be a parental figure or provide stability for L.J.

In a bonding study dated January 12, 2016, which was requested by Mother's counsel, Volcani stated that L.J. was an adorable child, cooperative, and well-focused during his individual study. She referred to Mother as "Mommy" or "Mom." Mother seemed to be "something of an emotional hammock" for L.J.

Volcani concluded that Mother was a central figure in L.J.'s psychological life. L.J. internalized Mother as a fundamental element in how she defines herself. During the observational part of his study, Mother related to L.J. in an effective manner. However, he did not have adequate data to meaningfully comment on Mother's general functioning or ability to adequately parent L.J. Volcani stated the need for stability and predictability for children in these situations is well documented, which could preclude a long-term guardianship arrangement. He stated the "stability factor" must be weighed against the possible long-term detrimental effects of terminating all contact between L.J. and Mother.

Mother testified that she was a cosmetologist and hoped to find employment after she took the state board exams. She had not lived at St. Vincent de Paul since November 2015. She visited L.J. every Sunday at the FVC. Mother believed she demonstrated a parental role during those visits. L.J. went to her for comfort and affection and acknowledged her as her mother. During visits, L.J. ran to her, hugged her, held her hand, played games with her, and, when it was time to leave, got upset "a little bit." Mother disagreed with Agency that L.J. should be adopted.

Forbes testified she was L.J.'s current social worker. Since L.J. had been removed from Mother the second time, Mother infrequently contacted Agency and months went by without any contact. L.J.'s behavior regressed a little bit and she acted more child-like when visiting with Mother. When the visits ended, Mother often became emotional and L.J. reflected Mother's emotions. However, L.J. generally separated pretty easily from Mother at the end of visits.

Forbes testified that L.J.'s enuresis had pretty much resolved, although she wet herself after Mother may have told L.J. at a visit that she might never see her again. L.J. had been placed in her current foster home since the end of February 2016 with foster parents who had an approved home study to adopt a child and were very excited about adopting L.J. They were also willing to consider caring for J.G., had received day and overnight passes for him, and had him in their home for weekends. They had been approved for placement and adoption of a second child and were not considering any other children beside J.G. Nevertheless, L.J. was their priority, along with maintaining her relationship with J.G.

Forbes stated her opinion that the benefits to L.J. of adoption outweighed the benefits to L.J. of her relationship with Mother. One of the reasons the current foster parents were chosen as L.J.'s prospective adoptive parents was that she believed they would continue L.J.'s relationship with J.G. However, even if they chose not to proceed with L.J.'s adoption, Forbes believed L.J. was adoptable. Through recruitment efforts, Agency had received much response for both L.J. and J.G.

Forbes testified that L.J.'s earlier problems had continued to improve after her second removal from Mother. Her bedwetting had stopped. She wrote cards to her current foster parents telling them "I love you. I don't want to . . . leave." Forbes believed that L.J. was comfortable in her current home, needed stability, and would be devastated if she were not adopted by her current foster parents.

Forbes stated her opinion that although there was a relationship between L.J. and Mother, she did not know how parental and beneficial that relationship was toward L.J. She believed Mother may have a somewhat parental relationship with L.J. Forbes had reviewed Volcani's bonding study and stated L.J. would be sad to not see Mother, but L.J. was forming a bond with her current caregivers who could help her deal with that sadness and to whom L.J. could ultimately attach as parent figures. L.J. had told Forbes that she could see calling her caregivers "Mom" in the future and saw herself as having three moms. L.J. told her she wanted to live with her current caregivers forever.

At the conclusion of the evidentiary portion of the hearing, the court denied Mother's section 388 petition and proceeded to the section 366.26 selection and implementation hearing. Considering the evidence admitted earlier on Mother's section 388 petition, the court found by clear and convincing evidence that Agency made reasonable efforts to finalize L.J.'s placement and that her placement was appropriate. The court found L.J. was adoptable, that adoption was in her best interests, and that none of the statutory exceptions to adoption applied. Accordingly, the court terminated Mother's parental rights to L.J. and ordered a permanent plan of adoption for L.J.

Mother timely filed a notice of appeal.⁴

DISCUSSION

I

L.J.'s Adoptability

Mother contends the juvenile court erred by finding L.J. was adoptable for purposes of selecting a permanent plan for her under section 366.26.

A. Applicable legal principles

When there is no probability that a child will be reunified with a parent and reunification services have been terminated, the juvenile court must conduct a section 366.26 hearing and select a permanent plan for the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) "The court has four choices at the [section 366.26] permanency planning hearing. In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption . . . ; (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care." (*Id.* at p. 53.) Adoption is the preferred permanent plan. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.)

At a section 366.26 hearing, the juvenile court, in selecting a permanent plan for a dependent child of the court, should find whether Agency has shown, by clear and convincing evidence, it is likely the child will be adopted and, if so, then terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (c)(1).) In

⁴ On July 26, 2016, L.J.'s counsel filed a letter in place of a formal brief in which she joined in Agency's arguments and positions in this appeal.

making that finding, the court must consider Agency's adoption assessment report and any other relevant evidence. (§ 366.26, subd. (c)(1).) "The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time." (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1060.) "[W]hat is required is clear and convincing evidence of the likelihood that the [child] will be adopted within a reasonable time either by the prospective adoptive family or some other family." (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844.)

"The question of adoptability posed at a section 366.26 hearing usually focuses on whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt that child. [Citation.] If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home." (*In re Carl R., supra*, 128 Cal.App.4th at p. 1061.) "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

The presence or absence of a proposed adoptive family is only one factor to be considered by the court. (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) The court should also consider, *inter alia*, the child's wishes (§ 366.26, subd. (h)(1)), but the child's

wishes are not necessarily determinative of his or her best interests. (*In re C.B.* (2010) 190 Cal.App.4th 102, 125.)

On appeal from an order finding a child is likely to be adopted within the meaning of section 366.26, we apply the substantial evidence standard of review. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223-224.) In determining whether there is substantial evidence to support a finding or order, "[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) The appellants challenging that finding bear the burden on appeal to show there is insufficient evidence to support the court's findings and orders. (*Ibid.*; *In re D.M.* (2012) 205 Cal.App.4th 283, 291.)

B. *Analysis*

Based on our review of the record, we conclude that Mother has not carried her burden on appeal to show there is insufficient evidence to support the juvenile court's finding that L.J. is likely to be adopted. By finding "[i]t is likely [L.J.] will be adopted," the court implicitly found L.J. was generally adoptable and found Agency's evidence, including Forbes's reports and testimony, to be credible. In her July 2015 addendum report, Forbes described L.J. as a fun and delightful eight-year-old girl who liked to play games, swim, and play at the park, and loved art. Since being removed from Mother's care, L.J.'s behavior at school and at home had significantly improved. Her overall

demeanor had noticeably changed. L.J. was no longer fearful of what to say, was engaging and confident, made eye contact, smiled, and was happy. Forbes stated that, as of June 2015, there were 11 possible families with approved adoptive home studies who would be interested in adopting a child with L.J.'s and her family's characteristics.

In her October 2015 addendum report, Forbes stated that L.J. is adoptable. Although, at that time, there was no potential adoptive home for L.J., Forbes believed a permanent home could be found. As of September 2015, there were six families in San Diego County with approved adoptive home studies who would be interested in adopting a child with L.J.'s characteristics. There were also four home studies from families who had expressed interest in adopting L.J. and J.G. as a sibling set.

In her January 2016 addendum report, Forbes stated that a potential adoptive home for L.J. had been identified. L.J.'s meeting with the potential adoptive family went well.

At the hearing, Forbes testified that since the end of February 2016 L.J. had been placed with foster parents who had an approved home study to adopt a child and were very excited about adopting L.J. L.J. was their priority, along with maintaining her relationship with J.G., and they were also considering adopting him. Forbes believed that L.J. was comfortable in her current home, needed stability, and would be devastated if she were not adopted by her current foster parents.

Even if the prospective adoptive parents chose not to proceed with L.J.'s adoption, Forbes believed L.J. was adoptable. Through recruitment efforts, Agency had received much response for both L.J. and J.G. Forbes testified that L.J.'s earlier problems had

continued to improve after her second removal from Mother. Her bedwetting had stopped.

In her December 2016 report, L.J.'s CASA stated that L.J. deserved permanency. In his bonding study, Volcani stated that L.J. was "an adorable child."

Based on the above evidence, we conclude there is substantial evidence to support the court's finding that L.J. is likely to be adopted. Agency's recruitment efforts located at least six, and as many as 11, families with approved home studies who were interested in adopting a child with L.J.'s characteristics, which evidence supports the court's finding that L.J. was generally adoptable. Furthermore, the fact that L.J.'s current foster parents had an approved adoption home study and were very interested in adopting L.J. provides additional support for the court's finding that L.J. was generally adoptable. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650.)

Contrary to Mother's assertion, the fact that Agency's reported numbers of potential adoptive families were not current as of the April 1, 2016, hearing (i.e., Agency's information was six and nine months old), does not make that evidence insufficient to support the court's finding that L.J. was generally adoptable. Mother does not cite any case showing such information must be current (e.g., within one month of a § 366.26 hearing) for a court to consider it together with all other evidence regarding a child's adoptability. Furthermore, although there may have been deficiencies in Agency's adoption assessment report, there nevertheless was sufficient evidence in that report and the other evidence considered by the court to support its finding that L.J. was adoptable. Also, contrary to Mother's assertion, the evidence showing that L.J. suffered from

enuresis and encopresis, had behavioral problems, and an adjustment disorder did not irrefutably show she was not generally adoptable. Rather, the court presumably considered that evidence together with all other evidence, including evidence showing that most of those problems were improving, in concluding that L.J. was likely to be adopted. Likewise, the fact that L.J. was nine years old and wanted to continue to see Mother and J.G. did not show L.J. was not likely to be adopted.

The cases cited by Mother are factually inapposite to this case and do not persuade us to reach a contrary conclusion. (See, e.g., *In re Brian P.* (2002) 99 Cal.App.4th 616, 624-625 [social worker's opinion that child was adoptable, without supporting facts showing adoptability, was insufficient]; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205 [insufficient evidence of child's general adoptability because no information regarding any approved families willing to adopt a child with his characteristics].) Unlike *In re Brian P.*, in this case the record includes not only Forbes's opinion that L.J. is adoptable, but also substantial other evidence, including evidence of L.J.'s characteristics and the number of prospective adoptive families interested in a child with L.J.'s characteristics, that is more than sufficient evidence to support the court's finding that L.J. is adoptable. None of the evidence regarding L.J.'s age, physical condition, emotional state, or other characteristics shows there is insufficient evidence to support the court's adoptability finding. (*In re Carl R.*, *supra*, 128 Cal.App.4th at p. 1061.) To the extent Mother cites other evidence and inferences that would have supported a contrary finding (i.e., that L.J. is not likely to be adopted), she misconstrues and/or misapplies the substantial evidence standard of review. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.)

Accordingly, we conclude there is substantial evidence to support the court's finding that L.J. is likely to be adopted within the meaning of section 366.26. (§ 366.26, subd. (c)(1); *In re Carl R.*, at p. 1060.)

II

Beneficial Parent-Child Relationship Exception

Mother contends the juvenile court erred by selecting a permanent plan of adoption for L.J. because there is substantial evidence showing she had regular contact with L.J. and that L.J. had a beneficial parent-child relationship with her.

A. Applicable legal principles

At a section 366.26 hearing, the juvenile court selects a permanent plan of care for the child. If the court finds the child is likely to be adopted, it generally must select adoption as the permanent plan unless an exception to that general rule applies, namely, "the court should not order a permanent plan of adoption when termination of parental rights would be detrimental to the child because '[t]he parents . . . have maintained regular visitation and contact with the [child] and the [child] would benefit from continuing the relationship.' " (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50, quoting former § 366.26, subd. (c)(1)(A) (now § 366.26, subd. (c)(1)(B)(i)).)

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean *the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.* In other words, the court balances the strength and quality of the natural parent/child

relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added.)

"The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467, fn. omitted.) "[F]or the [beneficial relationship] exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt." (*Id.* at p. 468.) The parent bears the burden to show, *inter alia*, that "he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent." (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

"Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1) [e.g., the beneficial relationship exception]." (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) On appeal, "[w]e determine whether there is substantial evidence to support the trial court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. [Citation.] If the

court's ruling is supported by substantial evidence, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c)." (*Id.* at pp. 297-298.)

B. *Analysis*

Mother asserts the court erred by selecting a permanent plan of adoption for L.J. because the evidence showed that she had regular contact with L.J. and that L.J. had a beneficial parent-child relationship with her. However, in so arguing, Mother misconstrues and/or misapplies the applicable substantial evidence standard of review. On appeal, we review the record to determine whether there is substantial evidence to support the court's finding (e.g., in Agency's favor) and *not* whether there is substantial evidence that could have supported a contrary finding by the court (e.g., in Mother's favor). It is not our function to reweigh the evidence or make inferences or deductions from the evidence; those are questions for the juvenile court. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.)

Although the court presumably found Mother maintained regular visitation and contact with L.J., it found Mother did not have a parental role in L.J.'s life and that any harm L.J. might suffer from the termination of her relationship with Mother was not sufficient to outweigh the benefits of adoption to L.J. Alternatively stated, the court found L.J. did not have a beneficial parent-child relationship with Mother within the meaning of section 366.26, subdivision (c)(1)(B)(i). Based on our review of the record, we conclude there is substantial evidence to support the court's finding that exception did not apply to preclude a permanent plan of adoption for L.J.

The record shows L.J. lived with Mother until she was almost six years old and for an additional 14 months thereafter during the three-year period she was a dependent of the court. During that time in Mother's care, L.J. presumably formed a parent-child relationship with Mother, but there had been many child abuse referrals and L.J. had been removed twice from Mother's care. In particular, after L.J. was returned to Mother's care in November 2013, L.J. did not have stable housing and attended three different schools, creating inconsistency in her education. In its April 2014 report, Agency reported L.J. had not attended school for over a month. Mother was homeless, was uncooperative with Agency, and had refused to give Agency her current address. Mother refused wraparound services for L.J.'s care that Agency offered. In a report, Forbes stated her opinion that although L.J. felt positively toward Mother, Mother had not demonstrated positive parenting and had not acted in a parental role despite many opportunities to do so. In a report, L.J.'s CASA stated her opinion that Mother had not shown the ability to be a parental figure or provide stability for L.J. In his bonding study, Volcani concluded that Mother was a central figure in L.J.'s psychological life. However, he did not state any opinion whether Mother had a parental role in L.J.'s life. Instead, he stated that he did not have adequate data to meaningfully comment on Mother's general functioning or ability to adequately parent L.J. At the section 366.26 hearing, Forbes stated her opinion that although there was a relationship between L.J. and Mother, she did not know how parental and beneficial that relationship was toward L.J. Accordingly, we conclude there is substantial evidence showing Mother did not have a parental role in L.J.'s life. To the extent Mother cites other evidence and inferences that would have supported a contrary

finding (i.e., that Mother had a parental role in L.J.'s life), she misconstrues and/or misapplies the substantial evidence standard of review.

Likewise, there is substantial evidence to support the court's conclusion that Mother did not carry her burden to show the benefits to L.J. of continuing her relationship with Mother outweighed the benefits L.J. would receive in a permanent home with adoptive parents. In a report, Forbes stated her opinion that the benefits to L.J. of adoption outweighed any detriment she would suffer from the termination of Mother's parental rights. At the hearing, Forbes again stated her opinion that the benefits to L.J. of adoption outweighed the benefits of continuing her relationship with Mother. L.J.'s behavior and enuresis had improved since her removal from Mother's care. Forbes believed that L.J. was comfortable in her current home, needed stability, and would be devastated if she were not adopted by her current foster parents. In contrast to the stable home provided by L.J.'s prospective adoptive parents, Mother had a history of physically abusing L.J. and J.G. and not providing them with stable housing, which problems she still had not overcome. In his report, Volcani stated the need for stability and predictability for children in these situations is well documented, which could preclude a long-term guardianship arrangement. Accordingly, there is substantial evidence to support the court's finding that Mother had not carried her burden to show L.J. would be greatly harmed if her contact and relationship with Mother ended and a permanent plan of adoption for L.J. was selected.

The cases cited by Mother are factually inapposite to this case and do not persuade us to reach a contrary conclusion. (See, e.g., *In re Scott B.* (2010) 188 Cal.App.4th 452.)

To the extent Mother cites other evidence and inferences that would have supported a contrary finding (i.e., that L.J. would be greatly harmed if her relationship with Mother was terminated), she misconstrues and/or misapplies the substantial evidence standard of review. On appeal, we do not reweigh the evidence or make inferences contrary to the court's reasonable inferences. Because there is substantial evidence to support the court's finding that Mother did *not* carry her burden to show that the benefits to L.J. of continuing her relationship with Mother outweighed the benefits to L.J. of adoption, the court properly found the beneficial parent-child relationship exception to adoption did not apply.⁵

DISPOSITION

The order is affirmed.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.

⁵ Because there is substantial evidence to support the court's finding the beneficial parent-child relationship exception did not apply to preclude selection of a permanent plan of adoption for L.J., we need not, and do not, address Mother's assertion that a permanent plan of guardianship would have been more appropriate for L.J.